

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of
the License of Patricia Palacheck to
Provide Family Child Care

**RECOMMENDED ORDER GRANTING
THE DEPARTMENT'S MOTION
FOR SUMMARY DISPOSITION**

This matter is pending before Administrative Law Judge Barbara L. Neilson pursuant to a Notice of and Order for Hearing dated September 25, 2003. On December 31, 2003, the Department of Human Services filed a Motion for Summary Disposition. On January 12, 2004, the Licensee filed a letter that did not directly respond to the motion. On January 16, 2004, the Administrative Law Judge sent a letter to the Licensee describing the process to respond to the motion and extending the deadline for that response. On January 26, 2004, the Licensee filed a letter in which she enclosed her license and stated that she was "giving up." On January 26, 2004, the Administrative Law Judge sent another letter to the Licensee requesting that the Licensee notify the ALJ in writing if she was withdrawing her appeal. The Administrative Law Judge stated that if Licensee did not respond, the ALJ would proceed to consider the Department's motion. The Licensee did not respond to the Administrative Law Judge's January 26, 2004 letter.

Vicki Vial Taylor, Assistant Hennepin County Attorney, 525 Portland Avenue South, Minneapolis, Minnesota 55415, represented the Department of Human Services. The Licensee, Patricia Palacheck, 4215 Freemont Avenue North, Minneapolis, Minnesota 55412, represented herself.

Based upon all of the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY RECOMMENDED that Commissioner of the Department of Human Services order that the Department's Motion for Summary Disposition be GRANTED and that the REVOCATION of Patricia Palacheck's Family Day Care License be AFFIRMED.

Dated: February 25, 2004.

/s/ Bara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

This Order is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Recommended Order of the Administrative Law Judge. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Recommended Order has been made available to the parties to the proceeding for at least ten days and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155; telephone 651-296-2701, for further information regarding the filing of exceptions and the presentation of argument.

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Recommended Order will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the Recommended Order and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

The Department of Human Services (“DHS” or “the Department”) has moved for summary disposition on the grounds that there are no material issues of fact in dispute and it is entitled to disposition of this case in its favor as a matter of law. Summary disposition is the administrative equivalent of summary judgment.^[1] Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.^[2] A genuine issue is one that is not a sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.^[3]

The moving party must demonstrate that no genuine issues of material fact exist.^[4] If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.^[5] The existence of a genuine issue of material fact must be established by substantial evidence; general averments are not enough to meet the nonmoving party's burden.^[6] The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.^[7] The nonmoving party also has the benefit of the most favorable view of the evidence. All doubts and inferences must be resolved against the moving party.^[8]

Background

The Licensee holds a family child care license issued by the Department. On September 11, 2003, the Department revoked her license based on a determination by Hennepin County Social Services (“Hennepin County” or “the County”) that the Licensee maltreated two children in her care.^[9] On September 12, 2003, Hennepin County sent the Licensee a consolidated notice, informing the Licensee of the determination that she had committed maltreatment, and that the maltreatment constituted a disqualification to licensure.^[10] Specifically, the County concluded that the Licensee physically abused R.B. based upon physical evidence of an observable injury to the child’s eyes and face, and corroborating information gathered during interviews. The County’s physical abuse determination met the definition of “serious maltreatment” under Minn. Stat. § 245C.02, subd. 18, and constituted a disqualification to licensure.^[11] The County also concluded that the provider neglected K.N. based on interviews with children and the Licensee. The County’s maltreatment (neglect) determination met the definition of “recurring maltreatment” under Minn. Stat. § 245C.02, subd. 16 and also constituted a disqualification to licensure.^[12]

After receiving notice of the maltreatment determination and disqualification, the Licensee timely requested reconsideration by letter dated September 19, 2003.^[13] On October 3, 2003, the County denied the Licensee’s request to reconsider the maltreatment determinations and denied the Licensee’s request for reconsideration of the disqualification.^[14] The County concluded that the Licensee posed a risk of harm to children served by the program. The County also refused to grant a set aside or variance to either disqualification. The County notified the Licensee of her right to appeal the maltreatment and disqualification determinations by requesting a fair hearing under Minn. Stat. § 256.045. The County informed her that the request must be in writing and must be submitted within 30 days of the notice, or 90 days if the Licensee could show good cause why the request was not submitted within the 30-day period. The Licensee did not request a fair hearing.^[15] The time period for requesting a fair hearing has lapsed.

On December 31, 2003, the Department filed a Motion for Summary Disposition. On January 12, 2004, the Licensee filed a letter that did not directly respond to the motion, but instead expressed confusion about the procedural posture of the case. Specifically, the Licensee stated that she believed she had already appealed this matter when she requested reconsideration of the County’s determinations back in September of 2003. The Licensee stated that she did not know that she had to request a fair hearing in addition to requesting reconsideration, and she stated that she was not informed of this requirement.

On January 16, 2004, the Administrative Law Judge sent a letter to the Licensee describing the nature of a summary disposition motion and gave the Licensee until January 26, 2004 to submit a response. On January 26, 2004, the Licensee submitted a letter in which she enclosed her license and stated that she was “giving up.” On January 26, 2004, the Administrative Law Judge sent another letter to the Licensee requesting that the Licensee notify the ALJ in writing if she was withdrawing her appeal. The Administrative Law Judge stated that if Licensee did not respond, the ALJ would

proceed to consider the Department's motion. The Licensee did not respond to the Administrative Law Judge's January 26, 2004, letter.

Arguments and Analysis

The Licensee did timely request reconsideration of the maltreatment determination and disqualification, but she did not request a fair hearing once her request for reconsideration was denied. The Department maintains that, because the Licensee failed to request a fair hearing to challenge the maltreatment and disqualification determinations, the maltreatment determinations and disqualification are deemed "conclusive" under Minn. Stat. § 245C.29, subds. 1(3) and 2(1)(iii). These provisions state that a maltreatment or disqualification determination is deemed "conclusive" if the Licensee does not request a hearing under Minn. Stat. § 256.045. The Department asserts that, since the maltreatment and disqualification determinations are conclusive, there are no genuine issues of material fact that have a bearing on the outcome of this case and the Department is entitled to judgment as a matter of law.

Minn. Stat. § 245C.29, subd. 1(3), provides, in part, as follows:

Unless otherwise specified in statute, a maltreatment determination or disposition under section 626.556 . . . is conclusive if:

(3) the individual did not request a hearing of the maltreatment determination or disposition under section 256.045.

Likewise, Minn. Stat. § 245C.29, subd. 2(1)(iii) provides, in part, as follows:

Unless otherwise specified in statute, a determination that:

(1) the information the commissioner relied upon to disqualify an individual under section 245C.14 was correct based on serious or recurring maltreatment . . . is conclusive if . . .

(iii) the individual did not request a hearing on the disqualification under section 256.045.

The Department correctly asserts that maltreatment and disqualification determinations for which a hearing is not requested are not otherwise reviewable. The Licensee's entitlement to a contested case hearing in this matter is conditioned on a request for a fair hearing under Minn. Stat. § 256.045. In its letter to the Licensee dated October 3, 2003, the County informed the Licensee that if she wished to appeal the maltreatment and disqualification determinations she had to request a fair hearing in writing and submit it to the Department within 30 days of the notice. This information was presented in the letter under the heading "APPEAL RIGHTS," which was in bold-face type and all capital letters. Since the Licensee did not request a fair hearing, the maltreatment determinations are deemed "conclusive" and the disqualification is not reviewable here.

The Licensee's disqualification constitutes a final agency action and cannot be challenged in this proceeding.^[16] There is, therefore, no genuine issue of material fact remaining for hearing and the Department is entitled to prevail as a matter of law.

Pursuant to Minnesota Rules part 9543.0100, subp. 3B, an agency may recommend that the Commissioner revoke a provider's license based on the provider's disqualification. Accordingly, the Administrative Law Judge recommends that the Department's order revoking Patricia Palacheck's family child care license be affirmed.

B.L.N.

^[1] Minn. R. 1400.5500 (K).

^[2] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03; Minn. R. 1400.5500 (K).

^[3] *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateaux v. Minnesota Department of Public Welfare*, 356 N.W. 2d 804, 808 (Minn. App. 1984).

^[4] *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

^[5] *Highland Chateau*, 356 N.W.2d at 808; *Hunt v. IBM Mid America Employees*, 384 N.W.2d 853, 855 (Minn. 1986).

^[6] *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

^[7] *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

^[8] See *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Dollander v. Rochester State Hospital*, 362 N.W.2d 386, 389 (Minn. App. 1985).

^[9] Attachment 5 to County's motion for summary disposition. Minn. Stat. § 245C.14, subd. 1(a)(3) mandates that the Commissioner disqualify a licensee when an investigation results in administrative determination listed under section 245C.15, subd. 4(b). Substantiated serious or recurring maltreatment of a minor constitutes a disqualification to licensure under Minn. Stat. § 245C.15, subd. 4(b)(2).

^[10] Attachment 1 to County's motion for summary disposition.

^[11] See, Minn. Stat. §§ 245C.14, subd. 1(a)(3) and 245C.15, subd. 4(b).

^[12] See, Minn. Stat. §§ 245C.14, subd. 1(a)(3) and 245C.15, subd. 4(b).

^[13] Attachment 2 to County's motion for summary disposition.

^[14] Attachment 3 to the County's motion for summary disposition.

^[15] Affidavit of Virginia Rae Bly, Attachment 4 to the County's motion for summary disposition.

^[16] Minn. Stat. § 245C.30, subd. 5.